155-528

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1889.

No. ~~1697.~~ 1455

ARTHUR ORIGET, PLAINTIFF IN ERROR,

vs.

EDWARD L. HEDDEN, COLLECTOR OF THE PORT OF NEW YORK.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED APRIL 12, 1890.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, APRIL 14, 1890.

1 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States for the southern district of New York, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you or some of you between Arthur Origet, plaintiff, and Edward L. Hedden, defendant, a manifest error hath happened, to the great damage of the said plaintiff, as is said and appears by his complaint, we, being willing that such error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, together with this writ, so that you have the same at the said place, before the justices aforesaid, on the second Monday of October next, that, the record and proceedings aforesaid being inspected, the said justices of the Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States ought to be done.

Seal of U. S. Circuit Court, South. Dist. New York.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 14th day of March, in the year of our Lord one thousand eight hundred and ninety, and of the Independence of the United States the one hundred and fourteenth.

JOHN A. SHIELDS,
Clerk of the Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit.

The foregoing writ is hereby allowed.
E. HENRY LACOMBE,
Circuit Judge.

2 [Endorsed:] 11190. Supreme Court of the United States. Arthur Origet, plaintiff in error, *vs.* Edward L. Hedden, defendant in error. Writ of error. Stanley, Clarke & Smith, 120 B'way, N. Y. city, attorneys for plaintiff in error. Due service of a copy of the within writ of error is hereby admitted this 14th day of March, 1890. Edward Mitchell, U. S. att'y, attorney for defendant in error. U. S. circuit court. Filed Mar. 14, 1890. John A. Shields, clerk.

UNITED STATES OF AMERICA, *Southern District of New York,* } ss:

I, John A. Shields, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, by virtue of the foregoing writ of error and in obedience thereto, do hereby certify that the following pages, numbered from one to thirty-seven, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the cause of Arthur Origet, plaintiff in error, against Edward L. Hedden, defendant in error, as the same remains of record and on file in said office.

Seal of U. S. Circuit Court, South. Dist. New York.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this thirty-first day of March, in the year of our Lord one thousand eight hundred and ninety, and of the Independence of the United States the one hundred and fourteenth.

JOHN A. SHIELDS, *Clerk.*

3 N. Y. Superior Court.

ARTHUR ORIGET, Plaintiff, *against* EDWARD L. HEDDEN, Defendant. } Summons. No. 1.

To the above-named defendant:

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer on the plaintiff's attorney within twenty days after the service of this summons, exclusive of the day of service; and in case of your failure to appear or answer judgment will be taken against you by default for the relief demanded in the complaint.

Dated New York, Sept. 15th, 1886.

STANLEY, CLARKE & SMITH,
Plaintiff's Attorneys.

Office, No. 160 Broadway, N. Y. city.

4 [Endorsed:] 11190. N. Y. superior court. Arthur Origet *vs.* Edward L. Hedden. Summons. Stanley, Clarke & Smith, plaintiff's attorneys, 160 Broadway, N. Y. city. U. S. attorney's office. Received Sep. 17, 1886. To Edward L. Hedden, Esq., collector, &c. Rec. Sept. 15th, 1886. E. L. Hedden, by F. S. McAvoy, attorney-in-fact.

5 The President of the United States of America to the judges of the superior court of the city of New York, Greeting:

[L. S.] We, for certain reasons, being desirous that our circuit court of the United States for the southern district of New York, in the second circuit, shall be certified of a certain

cause commenced before you against Edward L. Hedden, defendant, by Arthur Origet, plaintiffs, do therefore command you that the record and proceedings in the said cause you distinctly and openly send to the said circuit court, at the city of New York, on the 12th day of Oct., 1886, as fully and amply as the same are remaining before you, by whatever names the said parties may be called therein, together with this writ, that our said court may cause to be further done thereupon what of right ought to be done.

Witness Morrison R. Waite, Esquire, Chief Justice of the Supreme Court of the United States, the 7th day of Oct., in the year one thousand eight hundred and eighty-six.

TIMOTHY GRIFFITH, *Clerk.*

STEPHEN A. WALKER,
United States Attorney, Attorney for Defendant.

6 [Endorsed:] No. 11190. U. S. circuit court. Arthur Origet *vs.* Edward L. Hedden. Copy certiorari. Stephen A. Walker, U. S. attorney, attorney for defendant. Take notice that the within is a copy of a certiorari this day issued out of the circuit court of the United States for the southern district of New York. New York, Oct. 7, 1886. Yours, Stephen A. Walker, U. S. attorney, attorney for defendant. To S., C. & S. plaintiff's attorneys. Due service of a copy of the within and of the above notice is hereby admitted. New York, Oct. 7, 1886. Stanley, Clarke & Smith, plaintiff's attorneys.

7 Circuit Court of the United States for the Southern District of New York.

ARTHUR ORIGET, Plaintiff,
against
EDWARD L. HEDDEN, Defendant. } Complaint.

Plaintiff complains—

1st. That defendant was during the times hereinafter named collector of customs of the United States at the port of New York.

2d. That plaintiff during said times duly imported and entered at the port of New York the goods described in the bill of particulars annexed.

3d. The defendant, as such collector, exacted from plaintiff, as and for duties thereon, and plaintiff, in order to obtain said goods, was compelled to pay, and did pay, the sum of four thousand fifty-five & $\frac{14}{100}$ dollars in excess of the amount required by law.

4th. That plaintiff filed with said defendant due and timely protest in writing, upon each entry of said goods, against his decision exacting such duty, setting forth distinctly and specifically the grounds of objection thereto, and also as above stated.

5th. That plaintiff made due and timely appeals in each case to the Secretary of the Treasury, who has affirmed the decision of defendant as to certain of said entries, and as to the rest of said entries

has neglected to answer said appeals, and more than ninety days had elapsed since said unanswered appeals when this action was commenced.

6th. That the bill of particulars hereto annexed states for each importation separately the date of entry at the custom-house, of the payment of duty in excess, of the filing of the said protests, of the appeal to the Secretary of the Treasury, and of his decision thereon, together with the other particulars required by law, and is made a part hereof.

7th. That said sum so exacted as aforesaid has never been repaid to plaintiff and is still due and owing to him.

Wherefore plaintiff demands judgment against defendant for four thousand fifty-five & $\frac{14}{100}$ dollars, with interest on the several sums named in the bill of particulars from the several dates of payment as appear thereby, together with the costs and disbursements of this action.

STANLEY, CLARKE & SMITH,
Attorneys for Plaintiff.

8 [Endorsed:] United States circuit court. 11190. Arthur Origet against Edward L. Hedden. Complaint. Stanley, Clarke & Smith, plaintiff's attorneys, 160 Broadway, New York city. U. S. attorney's office. Received Oct. 8, 1886.

9 BILL OF PARTICULARS.

Name of Importer for all the (Importations), A. Origet.

Description of goods.	Whence imported.	Name of vessel.	Date of invoice.	Date of entry at custom-house.	Amount of duty illegally exacted.	Date of payment of duties in excess.	Protest filed.	Date of appeal to Secretary of the Treasury.	Date of Secretary's decision.
			1886.	1886.		1886.	1886.	1886.	
1. Woolens	Liverpool	City of Chester	Jan'y 23	Feb. 8	1,075 00	April 8	June 4	June 15	No ans. rec'd. 6045.
2. "	"	Aurania	" 28	" 9	2,060 69	" 8	" 4	" 15	"
3. "	"	Oregon	Feb'y 4	" 23	520 60	March 29	" 1	" 15	5972.
4. "	"	Chicago	Jan'y 30	" 23	398 85	" 29	Ap'l 14	Ap'l 27	4408.
					$4,055 14				

10 [Endorsed:] 11190. U. S. circuit court, southern district of New York. Arthur Origet against Edward L. Hedden, collector, etc. Bill of particulars.

NEW YORK, *Oct.*, 1886.

To Stephen A. Walker, Esquire, defendant's attorney.

SIR: Please to take notice that this action is brought to recover duties illegally exacted by the defendant as collector of customs at the port of New York, and the within is the plaintiff's bill of particulars.

STANLEY, CLARKE & SMITH,
Plaintiff's Attorneys, 120 *Broadway*.

U. S. attorney's office. Received Oct. 18, 1886.

11 Circuit Court of the United States for the Southern District of New York.

ARTHUR ORIGET
versus
EDWARD L. HEDDEN, Collector, etc. } 11190.

The defendant answers to the complaint as follows:

I. He denies that the true duty or that the true and lawful rate of duty on the goods referred to in the complaint was as stated in the complaint, and he denies that the plaintiff was compelled to pay or did pay defendant, as collector or otherwise, the sum stated in the complaint, or any sum in excess of the amount required by law, as duties upon the said goods, or that any sum of money unauthorized by law was exacted as duties on said goods or otherwise.

II. He denies that the plaintiff filed with defendant any protest or protests in writing, in which the grounds of objection to the exaction of duties on said goods were distinctly and specifically stated.

III. He denies that the sum stated in the complaint or any sum is now due and owing the plaintiff.

IV. He denies that he has any knowledge or information sufficient to form a belief as to whether the goods alleged in the complaint to have been imported at the times therein mentioned were in
12 fact such goods as are described in the said complaint.

V. And, further answering, he alleges that no protest was filed within ten days after the ascertainment and liquidation of the duties thereon.

VI. And, further answering, he alleges that no appeal was taken to the Secretary of the Treasury within thirty days after the date of the ascertainment and liquidation of duties thereon.

VII. And, further answering, he alleges that this action was not brought within ninety days after the decision by the Secretary of the Treasury on the appeal taken from the ascertainment and liquidation of duties thereon, or within ninety days after payment of duties paid thereon after such decision.

VIII. And, further answering, he alleges that this action was brought without the decision of the Secretary of the Treasury on the appeal from the ascertainment and liquidation of duties thereon having been first had and without ninety days having elapsed from the date of such appeal.

IX. And, further answering, defendant alleges that all moneys received by him from the plaintiff in respect of the importations in the complaint alleged to have been made were demanded of plaintiff and were by plaintiff voluntarily paid to him in his capacity as collector of customs as and for duties due the United States on imported merchandise, and were forthwith, before the commencement of this action and before the receipt by defendant of any pro-
13 test or objection on the part of the plaintiff, paid over by the defendant in his official capacity aforesaid to the United States and placed beyond his control.

X. And, further answering, defendant alleges that all moneys re-

ceived by him from the plaintiff in respect of the importations in the complaint alleged to have been made were sums due from plaintiff to the United States as duties, according to the rate of duty imposed by law, upon articles of merchandise imported by plaintiff and assessed with duty, and no other sums than duties regularly assessed and ascertained and liquidated according to law upon plaintiff's entry thereof were collected or received by defendant from the plaintiff.

Wherefore defendant demands judgment that the complaint be dismissed with costs.

STEPHEN A. WALKER,
United States Attorney, Attorney for Defendant.

Endorsed: 11190. U. S. circuit court, southern district of New York. Arthur Origet *vs.* Edward L. Hedden, collector, &c. Answer. Stephen A. Walker, United States attorney, attorney for defendant. Due service of a copy of the within answer is hereby admitted. New York, Jan'y 3, 1887. Stanley, C. & S., p.aintiff's attorneys. To S., C. & S., plaintiff's attorneys.

14 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court-rooms, in the city of New York, on Thursday, the 13th day of February, in the year of our Lord one thousand eight hundred and ninety.

Present: The Honorable E. Henry Lacombe, circuit judge.

ARTHUR ORIGET
vs.
EDWARD L. HEDDEN. } N. S. 11190.

Now comes the plaintiff, by Edwin B. Smith, Esq., his attorney, and moves the trial of this cause.

Likewise comes the defendant, by William Wickham Smith, Esq., assistant United States attorney, his attorney.

Thereupon a jury is empaneled and the cause proceeds to trial.

After hearing the evidence of the plaintiff and the argument of counsel for the respective parties, the jury, on the 17th inst., by direction of the court, say that they find a verdict for the defendant, and so they say all.

On motion of Edwin B. Smith, Esq., ordered that the plaintiff have a stay of sixty days in which to make and serve a case, with leave to turn the same into a bill of exceptions.

An abstract of the minutes.

[SEAL.] JOHN A. SHIELDS, *Clerk.*

15 United States Circuit Court, Southern District of New York.

ARTHUR ORIGET
vs.
EDWARD L. HEDDEN. } Judgment March 7th, 1890.

The issues in this action having been brought on for trial before Mr. Judge E. Henry Lacombe and a jury, at a circuit court of the October term, 1889, and the issues having been tried and a verdict for the defendant having been duly rendered on the 17th day of Feb'y, 1890, and his costs having been adjusted at $48.85—

Now, on motion of Edward Mitchell, United States attorney, for defendant, it is adjudged that the defendant have judgment against the plaintiffs upon the issues in this action, and that he recover the sum of $48.85, his taxed costs, and have execution therefor.

Judgment signed this seventh day of March, 1890.

JOHN A. SHIELDS, *Clerk.*

16 [Endorsed:] 11190. United States circuit court. Arthur Origet *vs.* Edward L. Hedden. Judgment-roll. Edward Mitchell, United States attorney, attorney for defendant. Filed ——, 188–. Costs, $—. U. S. circuit court. Filed Mar. 7, 1890. John A. Shields, clerk.

17 United States Circuit Court, Southern District of New York.

ARTHUR ORIGET
against
EDWARD L. HEDDEN. } N. S. 11190. Bill of Exceptions.

This case was tried on the 14th and 17th days of February, 1890, at the October term of this court, before Circuit Judge Lacombe and a jury.

This action was seasonably brought under U. S. Revised Statutes, sections 2931 and 3011, to recover an alleged excess of duty exacted by defendant, then collector of the port of New York, from the plaintiff, and paid by the latter under protest, and to obtain his goods which were imported into New York in February, 1886, in these four vessels, and entered for consumption, as follows: Per steamer City of Chester, entered February, 8, 1886; per steamer Aurania, February 9, 1886; per steamer Oregon, February 17, 1886, and per steamer City of Chicago, February 23, 1886. From defendant's liquidation and exaction of duty thereon appeals were duly taken to the Secretary of the Treasury, who did not answer the appeals, and all preliminary steps to submit this cause to the jury were seasonably and properly taken.

The invoice and entered value of each of the four importations was raised by the appraisers to an amount exceeding ten per
18 cent. thereof, and the collector liquidated and exacted duty upon the value so increased and the additional duty of twenty per cent. thereon mentioned in Revised Statutes, section 2900.

Upon the two entries of February eighth and ninth, 1886, the plaintiff did not call for any re-appraisement, but protested against the exaction of duty upon any value above that declared upon the entry.

That protest is as follows:

"NEW YORK, *June 4th*, 1886.

Hon. Edward L. Hedden, collector of customs, New York.

SIR: We hereby protest against the payment of more than the amount which would be due upon the valuations of our importations by the steamships Aurania, entry of February 9th, 1886, and City of Chester, entry February 8th, 1886, consisting of woolens, stated in the invoices and original entries thereof, claiming that said valuations are correct, and that said goods are liable to no more duty than would accrue upon said valuations, and that the additional values were not legally ascertained; that the appraiser made no proper or legal examination or appraisement of said goods; that he arbitrarily added to the values upon an arbitrary and assumed basis of the cost thereof; that in so doing he acted under instructions from special agents of the Treasury and not upon his own knowledge or judgment, and we specially protest against the additional duty of 20%, claiming for the reasons aforesaid that it did not accrue and said goods are not dutiable as charged by you; and we give notice that we pay all other higher amounts than is claimed above as the legal amount under compulsion, as well as said 20%, and to obtain possession of our goods; and we also give notice that we do not intend by this protest to relinquish or waive any right we may have to a refund of the difference between the duty exacted of us and any less duty which may hereafter be adjudged the legal duty upon said goods, intending this protest to be made against the present duty charged upon said goods, claiming that said duty is not the legal duty to which said goods are chargeable, holding you and the Government responsible for all excess of duty exacted by you upon said goods above the legal duty, and protesting against all illegal exactions of duty thereon, and hereby give notice that we intend this protest to apply to all future similar importations by us, and also intend the duplicate protest herewith submitted for transmission by you to the Secretary of the Treasury, under the rules of your office, to be an appeal to him from your decision, and to likewise apply to all future similar importations by us.

A. ORIGET,
By STANLEY, CLARKE & SMITH, *Att'ys.*"

19 Upon the trial, the manager of Mr. Origet's business in New York was asked by plaintiff's counsel whether he saw the appraising officers of the United States of that port with reference to the appraisal of these importations, and the witness testified that he saw Mr. E. A. Brown, the assistant appraiser in that division, regarding them. He was then asked:

Q. "State whether or not you said anything to Mr. Brown (and,

if so, what) as to the production of evidence as to the value of these goods."

The U. S. attorney objected to this question upon the ground that the importer's remedy for any defect or imformality in an appraisement was by calling for a re-appraisement. The court thereupon excluded the foregoing question and the plaintiff's exception to this ruling was taken and allowed.

The same witness then testified that he had conversation with the collector as to a re-appraisal, or a call for a re-appraisal, of these first two entries. He was then asked what that conversation was. To this inquiry the defendant objected, because it was not claimed in the protest that any re-appraisal was called for and refused; hence any such conversation was immaterial, adding, "If he wanted a re-appraisal, the way was provided for it by statute."

The question was excluded by the court and the plaintiff's exception allowed.

Upon the two later importations, of February 17th and 23rd, per the Oregon and the City of Chicago, re-appraisements were
20 called for and had. The Oregon importation consisted of four cases, and the other of three cases, all of which (both importations) were by the collector ordered to the public store, and were there at the time of the re-appraisements. The same merchant, John Lowry, acted as merchant appraiser upon each of these re-appraisals. He testified, being called by plaintiff: "I did not examine one case. I merely looked over the goods."

By the COURT:

Q. "You did not examine any case?"

A. "Not specially; not to appraise it."

He said the same was true of both importations.

Being asked by plaintiff to state in what way and by whom the report was made up, who made the computations upon which it was based, Mr. Lowry replied:

A. "There was one made up at my office; but one; and which one that is I cannot state, because it was a very complicated affair."

He said it was made at his office by Henry A. Bashley, now dead. The papers he (Bashley) prepared merely went to assist Mr. Brower and witness in writing the case up; did not think the paper was preserved. It was for a guidance simply. The report of the appraisal signed by the witness was based upon that computation and the witnesses' reports. Mr. Lowry said he simply gave Mr. Bashley directions to make out the average of the different valuations by the different appraisals of the witnesses, and that he understood to be the character of the paper he received from Mr. Bashley.
21 Gen. Brower, the general appraiser in the New York custom-house, sat with the witness (as he said) "in the re-appraisal, in the writing up of the re-appraisal."

This question was then put to Mr. Lowry by the plaintiff, and was objected to by the defendant and excluded by the court:

Q. "What I ask you is, Mr. Brower being the general appraiser and sitting with you on the re-appraisal, was there or not any agreement

(and, if any, what) as to the application of the valuation of one case on each invoice to the entire importation?"

To the ruling excluding this question the plaintiff took and was allowed an exception.

Being asked by plaintiff what Mr. Brower did with reference to the examination of the cases of goods in that importation, the witness testified that Mr. Brower simply passed and looked at them to see that they were woolens—he was not competent to judge of their value—to see that they corresponded with the invoices. This statement applied equally to both importations which were the subject of re-appraisement by the witness and Gen. Brower.

Upon cross-examination by the district attorney, Mr. Lowry testified that in reply to plaintiff's question in direct examination he did say that he made no special examination of these goods. What he did do was to pass into the part of the building where the goods were opened and placed for examination and look over the
22 goods to see that they were the same order of goods that his firm was in the habit of importing. Asked if the cases were all opened, he replied: "Simply one case of the goods that we looked at—one case was opened.—He added that he examined the greater portion of that case" enough to satisfy him that it was the same order of goods.

The U. S. attorney then put these questions:

Q. That is to say, you took the goods up in your hand, held them up, and examined them?

A. Not a thorough examination, but enough to see they were of the same order of goods that Woods, Lowry & Co. had imported; enough to satisfy me of that fact.

Q. And that testimony applies, does it, to each of the parcels?

A. Yes.

Q. In the invoice by the steamship Oregon there were four cases of goods. I understand you now to testify that you examined the goods in one case sufficiently to satisfy yourself that they were of the same order of goods that your firm had imported?

A. Yes, sir.

Q. In the invoices by the City of Chicago there were three cases of goods on the invoice, all three cases being, as appears here, at the public stores; and you examined one of those cases sufficiently to satisfy yourself that they were goods with which you were familiar as having been imported by Woods, Lowry & Co.?

A. Yes.

Q. To what extent Mr. Brower examined these goods when you were not present you are unable to testify?

A. Mr. Brower generally went with me.

Q. But what he may have done when you were not there, of course you do not know?

A. I do not know anything about that.

Q. After these computations had been made by Mr. Bashley you and Mr. Brower had a joint session, did you not, in which you made up your reports?

A. We did.

Stephen G. Clarke, then and now of counsel for Mr. Origet, was present with the general appraiser (Mr. Brower) and the merchant appraiser (Mr. Lowry) at the appraiser's stores March 12th, 1886, when the re-appraisement of plaintiff's goods was about to take place, and addressed them (in plaintiff's behalf) the subjoined letter, and the following proceedings of which it was part, took place:

23 "In the matter of the re-appraisement of m'f'rs of wool imported by A. Origet and E. Pouquet & Co.

"Before Hon. Geo. V. Brower, U. S. general appraiser.
"Jno. Lowry, Esq., M. A.

"M'CH 12, 1886.

"Stephen G. Clarke, Esq., as attorney for Messrs. Origet and Pouquet & Co., makes the following requests in writing, which *is* filed with the general appraiser and marked Ex. A:

"'NEW YORK, *March* 12, 1886.

"'To Geo. V. Brower, general appraiser, and John Lowry, merchant appraiser:

"'In the case of the re-appraisements of merchandise entered by A. Origet, now proceeding before you, I ask, as counsel for the importer, to be present to examine the schedules of the different witnesses, to ask them questions, or to suggest questions to you to be asked them, and hear and know the testimony which you have or may receive.

"'I make a similar request as to the re-appraisement of merchandise entered by E. Pouquet & Co., now about to proceed.

"'If this request is denied, I further ask, in the name of Mr. Origet, that Mr. A. Origet and Mr. Ridgeley, associated with him in business, be present when the witnesses are examined in the case of Origet, and that one of them be allowed to see the schedules of the witnesses.

"'I make a similar request in the name and behalf of E. Pouquet & Co., that Mr. H. Pfeiffer, a member of said firm, be allowed to be present during the hearing of the case of E. Pouquet & Co., with a similar request as to the examination of witnesses and papers.

"'Respectfully, STEPHEN G. CLARKE.'

"To which the general and merchant appraisers say that they will deny the application of the attorney to be present; that they desire to hear the importers, Mr. Origet and Mr. Pouquet, in regard to their re-appraisements, and that they will be glad to have any
24 suggestions that they may have to make as to asking questions of witnesses.

"Mr. CLARKE: How about the examination of schedules?

"Mr. BROWER: What do you mean by the examination of schedules?

"Mr. CLARKE: Allowing the importers to see the schedules of the different witnesses.

"Mr. BROWER: Mr. Clarke further asks that they may be permitted to examine the various affidavits made by the experts, importers, merchants, and others, and also to be present at the taking of any testimony herein, and to cross-examine all such witnesses as may be produced here on this re-appraisement, or to suggest questions to the general appraiser.

"The general appraiser and the merchant appraiser say, in regard to that, they cannot permit the importers to be present during the taking of the testimony or the examination of the affidavits, but they will be glad to receive suggestions from the importers in asking any questions of any and all who may be called.

"Mr. CLARKE: I don't see how we can make any suggestions as to asking questions unless we hear what is said, and therefore I renew my request, in view of the remark made by the general appraiser, that the respective parties in the two cases may examine the affidavits and schedules, together with the questions put to the witnesses who have been or who may be examined, and hear or have exhibited to them the testimony that may be given, so that they may be enabled to suggest questions.

"Mr. BROWER: The same ruling as previously."

The plaintiff's protests against the defendant's assessment and exaction of duties upon the values ascertained by means of these re-appraisements, were as follows:

"Edward L. Hedden, Esq., collector of customs, New York:

SIR: I protest against the liquidation of my entry by the S. S. Oregon on or about February 23rd, 1886, of certain merchandise imported by me, and against the ascertainment of the duties and the exaction made by you in respect to said goods, and against the payment of duties calculated upon any valuation in excess of the entered value, upon the following grounds:

1st. That said goods are liable to no greater amount of duty than that accruing upon the invoice or entered value thereof.

2nd. That the appraiser's return, dated on or about February 27th, 1886, was made contrary to law and without legal or proper examination of the goods.

3rd. That I was entitled to a re-appraisement of said goods, according to law, by a general and merchant appraiser, and made due demand therefor on or about March 2, 1886.

4th. That, notwithstanding said demand for re-appraisement, no legal re-appraisement of said merchandise was ever had.

5th. That the so-called re-appraisement, in accordance with which you have undertaken to assess and liquidate the duties upon said merchandise, was illegally conducted and was not a valid re-appraisement, according to which duties might be assessed, in this, that the general appraiser, George V. Brower, did not act upon his knowledge or judgment of the goods, but permitted his judgment and return of value to be controlled and dictated by special agents of the Treasury.

That he did not personally examine and appraise the merchandise in question.

That the merchant appraiser, John Lowry, did not personally examine and appraise the merchandise in question.

That, although requested, said general appraiser refused to permit me to be represented by counsel.

That said general appraiser refused to allow counsel to be present to examine the schedules of the different witnesses, to ask them questions, or to suggest questions to be asked them.

26 That said appraiser refused to allow counsel to hear or to know the testimony which he might receive.

That said appraiser also thereafter refused to allow me and Mr. Ridgeley, associated with me in business, to be present when the witnesses were examined, and also refused to allow either myself or Mr. Ridgeley to see the schedules of the witnesses.

That thereupon the following proceedings took place before the general and merchant appraiser:

Mr. Brower, general appraiser, said "'that they desired to hear the importer, Mr. Origet, in regard to his re-appraisement, and that they will be glad to have any suggestions that he may have to make as to asking questions of witnesses.

"'COUNSEL FOR ORIGET: How about the examination of schedules?

"'Mr. BROWER: What do you mean by the examination of schedules?

"'COUNSEL FOR ORIGET: Allowing the importer to see the schedules of the different witnesses.

"'Mr. BROWER: Counsel for Origet further asks that they may be permitted to examine the various affidavits made by the experts, importers, merchants, and others, and also to be present at the taking of any testimony herein and cross-examine all such witnesses as may be produced here on this re-appraisement, or to suggest questions to the general appraiser.

"'The general appraiser and the merchant appraiser say in regard to that that they cannot permit the importer to be present during the taking of the testimony or the examination of the affidavits, but they will be glad to receive suggestions from the importer in asking any questions of any and all who may be called.

"'COUNSEL FOR ORIGET: I don't see how we can make any suggestions as to asking questions unless we hear what is said, and therefore I renew my request, in view of the remark made by the general appraiser, that the respective parties in the case may examine the affidavits and schedules, together with the questions put to the witnesses who have been or who may be examined, and hear or have exhibited to them the testimony that may be given, so that they may be enabled to suggest questions.

"'Mr. BROWER: The same ruling as previously.'

That in the said re-appraisement, while refusing to permit my counsel or myself to be present, said general appraiser permitted special agents of the Treasury and my business rivals to attend.

That, having taken testimony on the 12th of March, 1886, the

general appraiser proceeded subsequently to call other witnesses and to call before him parties to estimate the value of said goods without giving me any notice of such proceedings.

That on arriving at the valuation returned by said general and merchant appraiser to you they took the average of the valuations of all the witnesses examined without regard to their competency or knowledge of the goods.

That witnesses were permitted to return schedules of the value of all the goods without an examination thereof by them.

27 That such schedules were considered by the merchant and general appraiser.

That my invoice was shown to one or more of the witnesses who were examined, and employés in the appraiser's office were permitted to give them the figures desired to be returned.

That the testimony and valuation of E. H. Van Ingen was received.

That testimony taken in respect to the value of said goods was suppressed and not submitted to the merchant appraiser.

That witnesses whose names I suggested were not called, and others that were called were dismissed without being examined.

That testimony as to the value of these goods in English money was received from various witnesses.

That the equivalent valuation in French money of account was not obtained where valuations were made in English money.

That in other respects said alleged re-appraisement was illegally and wrongfully conducted, and was therefore void and of no effect.

And I give notice that I pay all higher duties or rates than is claimed above as the legal duty under compulsion and to obtain and keep quiet possession of my goods, intending this protest to be made against the amount of duty charged upon said goods, claiming that said duty is not the legal duty to which said goods are chargeable, holding you and the Government responsible for all excess of duty exacted by you upon said goods above the legal duty and protesting against all illegal exactions of duty thereon.

A. ORIGET,
By STANLEY, CLARKE & SMITH, *Att'ys.*"

The protest upon the importation by the City of Chicago, entered February 23rd, 1886, was identical with the foregoing, except as to the name of the vessel and the dates.

Referring to the goods which became the subject of re-appraisement, Mr. Origet's manager was asked this:

Q. "State whether or not those goods in the several cases were all of the same character as to value?"

The U. S. attorney objected to this question as immaterial.

28 The question was excluded by the court, and plaintiff took and was allowed an exception.

This witness testified to the presence of Mr. Hinds, a Treasury agent, at the re-appraisement. Witness was asked:

"Q. Did you hear any of the questions put to the witness?"

This was objected to as immaterial. The court excluded the question, allowing the plaintiff an exception.

The witness was asked if Mr. Hinds did not himself put questions to the witness upon that examination.

The U. S. attorney objected to the question as immaterial. It was excluded by the court, and an exception taken by and allowed to the plaintiff.

FREDERICK W. BROOKS testified that he had computed the difference between the duties upon these goods as admitted to be due by the plaintiff (as per entries) and the duties exacted by and paid to the collector thereon. It was, including interest, $4,992.06.

The plaintiff then rested.

The foregoing is a statement of all the evidence given in this case, the defendant offering no testimony.

Thereupon the defendant moved to have a verdict directed in his favor by the court. In replying to this motion, the plaintiff's counsel argued (*inter alia*) that section 2900 of the Revised Statutes of the United States was unconstitutional in its provision for affixing or authorizing a twenty per cent. additional duty. The court expressed an opinion that this point was not open under the plaintiff's
29 protests. The court granted the defendant's motion and directed the jury to bring in a verdict for the defendant; to which ruling and direction the plaintiff took an exception, which was allowed by the court. The jury returned a verdict for the defendant under and in obedience to this direction of the court.

And inasmuch as none of the exceptions, matters, and things hereinbefore stated would otherwise appear by the record of said trial and cause, therefore on the prayer of said plaintiff, by his counsel, the judge presiding at said trial has settled, allowed, and signed this bill of exceptions and ordered the same to be filed with the same force and effect as if it had been reduced to writing, signed, and filed before the case was given to the jury.

Witness my hand this 5th of March, A. D. 1890.

E. HENRY LACOMBE, *Judge.*

Consented to.

STANLEY, C. & S.,
Att'ys for Pl'ff.

EDWARD MITCHELL,
U. S. Att'y, Att'y for Def't.

Endorsed: N. S. 11190. U. S. circuit court, southern dist. of New York. Arthur Origet *vs.* Edward L. Hedden. Bill of exceptions. Stanley, Clarke & Smith, plaintiff's attorneys, 120 Broadway, N. Y. U. S. circuit court. Filed Mar. 5, 1890. John A. Shields, clerk.

30 Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit.

ARTHUR ORIGET
vs.
EDWARD L. HEDDEN. } Bond for Damages and Costs.

Know all men by these presents that we, Robert S. Ridgely, 29 W. 23d St., New York city, and Chas. W. Thompson, 862 5th Ave., New York city, are held and firmly bound unto the above-named Edward L. Hedden in the sum of two hundred and fifty dollars, to be paid to the said Edward L. Hedden; for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 8th day of March, in the year of our Lord one thousand eight hundred and ninety.

Whereas the above-named Arthur Origet has prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled suit by the judge of the circuit court of the United States for the southern district of New York:

Now, therefore, the condition of this obligation is such that if the above-named Arther Origet shall prosecute his writ of error to effect and answer all damages and costs if he shall fail to make his writ of error good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

C. W. THOMPSON. [SEAL.]
R. S. RIDGELY. [SEAL.]

Sealed and delivered and taken and acknowledged this 8th day of March, 1890, before me—

HENRY D. NORTHROP,
[SEAL.] *Notary Public, N. Y. Co., No.* 1.

31 UNITED STATES OF AMERICA, } *ss:*
Southern District of New York,

C. W. Thompson, 86 5th Ave., N. Y. city, and R. S. Ridgely, 29 W. 23d St., N. Y. city, being duly sworn, do depose and say that they are worth the sum of five hundred dollars over and above all their just debts and liabilities.

C. W. THOMPSON.
R. S. RIDGELY.

Sworn to this 8th day of March, A. D. 1890, before me—

HENRY D. NORTHROP,
[SEAL.] *Notary Public, N. Y. Co., No.* 1.

[Endorsed :] 11190. U. S. circuit court, southern district of New York. Arthur Origet *vs.* Edward L. Hedden. Bond for costs on writ of error. Stanley, Clarke & Smith, 120 Broadway, att'ys for pl'ff. Approved as to form, amount, and sufficiency of sureties. Dated New York, March 14, 1890. E. Henry Lacombe. Original filed Mar. 14, 1890.

32 Supreme Court of the United States.

ARTHUR ORIGET, Plaintiff in Error,
vs.
EDWARD L. HEDDEN, Defendant in Error. } Assignment of Errors.

Afterwards, to wit, on the second Monday of October, in the same term, before the justices of the said court, at the Capitol, in Washington, comes the said plaintiff in error, by Edwin B. Smith, his attorney, and says that in the record and proceedings aforesaid there is manifest error, in this, to wit: That by the record aforesaid it appears that the judgment aforesaid, in form aforesaid given, was given for the said defendant in error against the said plaintiff in error, whereas by the law of the land the said judgment ought to have been given for the said plaintiff against the said defendant, and that a verdict was by the court directed to be (and accordingly was) given in favor of said Hedden against the plaintiff.

And the said plaintiff prays that the judgment aforesaid, for the error aforesaid and other errors in the record and proceedings aforesaid, may be reversed, annulled, and altogether held for nothing, and that he, the said plaintiff, may be restored to all things which he has lost by occasion of said judgment, &c.

ARTHUR ORIGET,
By EDWIN B. SMITH,
His Attorney.

33 [Endorsed :] 11190. United States Supreme Court. Arthur Origet, plaintiff in error, *vs.* Edward L. Hedden, defendant in error. Assignment of error. Stanley, Clarke & Smith, 120 B'way, N. Y. city, attorneys for plaintiff in error. Due service of a copy of the within assignment in error is hereby admitted this 14th day of March, 1890. Edward Mitchell, U. S. att'y, attorney for def't in error. To Edward Mitchell, attorney for def't in error. Original filed Mar. 14, 1890.

34 Supreme Court of the United States.

ARTHUR ORIGET, Plaintiff in Error,
vs.
EDWARD L. HEDDEN, Defendant in Error. } Joinder in Error.

And afterwards, to wit, on the second Monday of October, in said term, the said defendant in error, by Edward Mitchell, U. S. attorney, his attorney, comes here into court and says that there is no

error either in the record or proceedings aforesaid or in the giving of the judgment aforesaid.

And he prays that the said Supreme Court, before the justices thereof now here, may proceed to examine as well the record and proceedings aforesaid as the matters aforesaid above assigned for error, and that the judgment aforesaid, in form aforesaid given, may be in all things affirmed, &c.

EDWARD MITCHELL,
U. S. Att'y, Attorney for Defendant in Error.

35 [Endorsed:] 11190. United States Supreme Court. Arthur Origet, plaintiff in error, *vs.* Edward L. Hedden, defendant in error. Joinder in error. Edward Mitchell, U. S. att'y, attorney for defendant in error. Due service of a copy of the within joinder in error is hereby admitted this 14th day of March, 1890. Stanley, Clarke & Smith, attorneys for plaintiff in error. To ——, attorney for plaintiff in error. Original filed Mar. 14, 1890.

36 UNITED STATES OF AMERICA, *ss:*

To Edward L. Hedden, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October, eighteen hundred and ninety, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the southern district of New York, wherein Arthur Origet is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties on that behalf.

Dated March 14th, 1890.

E. HENRY LACOMBE.

37 [Endorsed:] 11190. U. S. Supreme Court. Arthur Origet, plaintiff in error, against Edward L. Hedden, defendant in error. Citation. Stanley, Clarke & Smith, 120 B'way, N. Y. city, attorneys for plaintiff in error. Due service of a copy of the within citation is hereby admitted this 14th day of March, 1890. Edward Mitchell, U. S. att'y, attorney for defendant in error. U. S. circuit court. Filed Mar. 14, 1890. John A. Shields, clerk.

Endorsed on cover: S. New York C. C. U. S. No. 1607. Arthur Origet, plaintiff in error, *vs.* Edward L. Hedden, collector of the port of New York. Filed April 12, 1890.